



INTERIOR BOARD OF INDIAN APPEALS

Estate of John S. Ramsey (Wap Tose Note)

2 IBIA 237 (04/17/1974)

Also published at 81 Interior Decisions 197

Reconsideration denied:

2 IBIA 305

Judicial review of this case:

Dismissed, *Scott v. United States*, No. 3-74-39 (D. Idaho Aug. 11, 1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JOHN S. RAMSEY (WAP TOSE NOTE)

Nez Perce Allottee No. 853, Deceased

IBIA 74-2

Decided April 17, 1974

This is an appeal from a decision denying a petition for rehearing.

Reversed and Remanded.

Indian Probate: Wills: Testamentary Capacity: Generally

Where a will, rational on its face, is shown to have been executed in legal form, the law presumes testamentary capacity of the testator, that the will speaks his wishes, and in order to overcome such will, the evidence must be clear, cogent and convincing. At the time the will is executed the testator must have sufficient mind

and memory to understand the transaction in which he is then engaged, to comprehend generally the nature and extent of the property which constitutes his estate and of which he is contemplating disposition, and to recollect the objects of his bounty.

Indian Probate: Wills: Testamentary Capacity: Generally

Testamentary capacity is a question of fact to be determined upon the evidence in the individual case. No general rule can be devised which would be a satisfactory standard for the determination of the issue in all cases.

APPEARANCES: Henry Felton, Esq., for appellant, Aaron (Allen) Ramsey, Norman L. Gissell, Esq., for appellee, Clara Ramsey Scott.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of Administrative Law

Judge, Robert C. Snashall, denying the petition of Aaron (Allen) Ramsey, for rehearing.

The decedent, John S. Ramsey, died testate on January 15, 1971. Surviving the decedent were certain heirs at law who would have taken interests in the estate had there been no last will and testament. They are, Benedict Ramsey, son, 1/4; Aaron Ramsey, son 1/4; Clara Ramsey Scott, daughter, 1/4; and Roy Orville Hayes, Jr., grandson 1/4.

The matter of the purported last will and testament of John S. Ramsey, dated May 12, 1970, came on for hearing at Lapwai, Idaho, on October 29, 1971 and August 23, 1972. Subsequent to the hearing, the Judge issued on February 26, 1973 an Order approving the will and Decree of Distribution. The will devised and bequeathed certain of the decedent's trust property as follows:

CLAUSE 2 (to Ben Ramsey and Clara Ramsey Scott),
CLAUSE 3 (to Clara Ramsey Scott and Roy Hayes, Jr.),
CLAUSE 4 (to Jennifer Ramsey),
CLAUSE 6 (to Mazie Red Wolf Ramsey, Roy Hayes, Jr. and Darlene James),
CLAUSE 7 (To Aaron (Allen) Ramsey, decedent left nothing).
RESIDUAL (No residual. However, if decedent acquired anything in the future, it would go to Aaron (Allen) Ramsey).

Aaron (Allen) Ramsey petitioned for a rehearing. Petition for rehearing was denied on May 1, 1973. An appeal was timely filed June 29, 1973.

The basic contention of the appellant was that the decedent did not possess the requisite mentality to make a will on May 12, 1970, and could not and did not make the will.

Where a will, rational on its face, is shown to have been executed in legal form, the law presumes testamentary capacity of the testator, that the will speaks his wishes, and in order to overcome such will, the evidence must be clear, cogent and convincing.

At the time the will is executed the testator must have sufficient mind and memory to understand the transaction in which he is then engaged, to comprehend generally the nature and extent of the property which constitutes his estate and of which he is contemplating disposition, and to recollect the object of his bounty. In re Gwinn's Estate, 219 P. 2d 591, 36 Wash. 2d 583 (1950); Dean v. Jordan, 79 P. 2d 331, 194 Wash. 661 (1938); In re Torstensen's Estate, 184 P. 2d 255, 28 Wash. 2d 837 (1947).

Testamentary capacity is a question of fact to be determined upon the evidence in the individual case. No general rule can be devised which would be a satisfactory standard for the determination of the issue in all cases. In re Heazle's Estate, 257 P. 2d 556, 558, 74 Idaho 72 (1953) * * *.

On May 12, 1970, the date decedent executed the will in question he was 82 years of age. He had had several strokes, the last of which left him paralyzed and an invalid. He had no use of his left side and had very limited movement of his right arm. He was not able to write. He was hard of hearing and could see out of one eye only to distinguish night from day or light from darkness. He had no control over his bowel functions nor could he feed himself. His last stroke left his speech impaired.

Dr. Vern Bauman, decedent's physician, testified at the hearing held on August 23, 1972, that by May 1970 while he was taking care of the decedent, he was pretty far gone mentally and could not understand the import of a will draft if it were read to him, because he had a chronic brain syndrome and because he was dying by degrees including the brain.

Decedent's son, Benedict Ramsey, testified that he took care of the decedent for a period prior to 1963 after which decedent's son, Aaron Ramsey began to care for him. He further testified that he saw his father at Tri-State Convalescent Center several

times during 1970. He testified that based upon his observations of his father over a period of time including 1970, he did not think that the decedent was competent to make a will on May 12, 1970.

Pertinent portions of the testimony of Dr. Bauman and Benedict Ramsey taken from the transcript of the hearing held at Lapwai, Idaho, on August 23, 1972, are hereinafter set forth:

Judge Snashall. Doctor, let me ask you, would it be your statement that he probable couldn't draft something like that, [Will], is that correct?

A. No way, no way.

Q. But, now what would be your opinion if somebody else drafted it and read it to him, do you think he could understand what they were saying to him?

A. Again, I feel that he probably could not 'cause he has had considerable advance degeneration. He had a chronic brain syndrome, which is a (unintelligible) of the brain, and he was dying literally by small areas including the brain. (Tr. 91.)

* * * * *

Q. O.K. I understand that's difficult. But they were able to gather that from him apparently?

A. . . . This patient is an invalid, actually blind from arteriosclerotic degeneration, can't see from the left side. . . . (Tr. 92.) * * *

Q. You believe from a medical standpoint that he couldn't adequately identify his symptoms to you, is that. . . .

A. That's correct, because he had a stroke and. . . . (Tr. 93.) * * *

Q. He was able to recognize his relatives. Do you think he had the capacity to discern between a brother and sister?

A. He got pretty far gone when I saw him in May and July (1970). He was just . . . couldn't help himself couldn't feed himself, had to be fed. It was a shame to keep him alive. We just gave him symptomatic care.

Q. You did see him on the 12th of May 1972 (meaning 1970)?

A. May 6th, July 15, August 5, September 3rd and October 6th.
(Tr. 94.) * * *

Q. Dr. Bauman, you stated a moment ago that by May when you were examining him, he was pretty far gone. You were speaking of physical capabilities, were you not?

A. Physically and mentally, the more I reread my notes here. I remember the gentleman that he was well beyond being alive, I still don't know why he was hanging on. (Tr. 95.).* * *

Q. Would it be a possibility, now I'm asking this strictly as a possibility, would it be a possibility that when you examined him at that time that with the normal reticence, if I may use that word, on the part of an Indian person plus the fact of mere advanced age that he may have been competent but was refusing to answer or talk to you?

A. I did not sense this. He would mumble and of course, his stroke affected his speech. (Tr. 96.)

Pertinent portions of Benedict Ramsey's testimony taken from the transcript of the August 23, 1972 hearing are hereinafter set forth:

Q. Did you try to talk to him?

A. Yes I did.

Q. Were you able to do so?

A. Well, it didn't seem like to reach him.

Q. And did he know you?

A. Well, after I told him who I was, then he knew me.

Q. Was that sometime after you come into the room?

A. That is right. (Tr. 57.)

* * * * *

Q. Now you have known your father over many years, have you not?

A. Yes. * * *

Q. Now then, you saw your father in May of 1970, didn't you?

A. Oh, yes. * * *

Q. Have you an opinion whether or not he was competent to make a will?

A. I don't really think so. (Tr. 59.)

Q. What did you observe about your father when you went there. Just tell the Examiner what you observed about your father when you went in there to visit.

A. Well, he was just laying there, that's all, that's what I observed. * * *

Q. . . . you talked to your father, right?

A. I tried to, yeah.

Q. In the retirement home? Tri-State?

A. Yeah, I seen him. Whenever I come from Seattle, I used to visit him.

Q. All right. Now I'm talking specifically about your statement that you visited him sometime in May 1970. Now I want to know, at that time, when you talked to him did he answer your questions.

A. Well, I talked to him, but I mean, you know, he talked to a guy that he was, he was floating around in his bed. That's what he was talking to me about. You know, the kind of guy that was . . . he's sees things on the walls and everything else.

Q. Is that what he told you or what . . . the statements that he made?

A. That's what he said, that's what he said.

Q. All right, what specifically did he say when you were there?

A. Well, he said he was getting on his bed and they are going someplace, you know, to go, you know. . . (Tr. 60, 61.) * * *

Q. O.K. Did you go through this routine with him when he saw stuff on the walls and what not every time you went to see him?

A. Well, he was that way all the time. * * *

* * * * *

Q. You were then concerned with his mental sanity at that time?

A. Well, when he sees things on the wall, you know darn well he . . . you know what to think of the guy. * * * (Tr. 64.)

Q. He didn't talk to you after that?

A. Well, he talked about what he was doing, you know I mean, he wasn't talking, just generally talking, you know, like him and his bed was going to fly out of there. * * * (Tr. 65.)

* * * * *

Q. It's your statement then that as far as your concerned, your father was incapable of making a will...

A. Ever since, ever since '59, he could - he couldn't do nothing for himself, period.

Q. I'm not talking about his physical problems now, I'm talking about his mental. . .

A. You know, his mentality would run away from himself. (Tr. 68.)

Great weight is given to the testimony of Dr. Bauman because he was a physician and because he was decedent's physician from 1969 until decedent's death.

Much weight is given to the testimony of Benedict Ramsey because he took care of his father for a period of time prior to 1970 and because he visited him at the convalescent home on occasions in 1970 and was able to observe him. In addition Benedict Ramsey stood much to lose in the event the 1970 will was declared invalid. In other words his testimony was against his own interest.

The testimony of Twila Williams, registered nurse at Tri-State Convalescent Center, and Mildred W. Rowley, practical nurse Tri-State, is given weight only insofar as they witnessed the placing of decedent's thumb print on the May 12, will.

Because of the discrepancies in the testimony of Clara Ramsey Scott and the testimony and Memorandum of May 12, 1970, of Regina Parot, weight is given to the testimony of Regina Parot only insofar as she was the scrivener who drafted the will. Little or no weight is given to the testimony of Clara Ramsey Scott.

Portions of the testimony of Regina Parot, Clara Ramsey Scott and Mildred Rowley, are set forth below.

Pertinent portions of Regina Parot's testimony taken from the transcript of the hearing held on August 23, 1972, are hereinafter set forth.

Q. May I ask, did John Ramsey speak the English language? (Tr. 4.)

A. Yes he did.

Q. Did he read and write the English language?

A. Yes, he could read. He had to hold the paper close but he could read and he could write.

Q. And it's your understanding then that he fully understood what was stated in that document?

A. Absolutely. * * * (Tr. 5.)

Q. Did you know him prior to this time?

A. No I did not.

Q. How long did you talk to him before the will was prepared?

A. Oh, I talked to him probably fifteen minutes before I prepared the will.

Q. All right. Now subsequent to the preparation of that will, or was it prior . . . this memorandum, the copy of which you have in your hand, I'm handing you what purports to be the original and ask you if that's an original of your memorandum of May 12, 1970?

A. Yes it is. * * * (Tr. 6.)

Q. Did you do this in contemplation of the information as to the execution of this will may be necessary in the future?

A. Yes I did.

Q. Does the information contained in this document, in your opinion, exactly the circumstances as that occurred at the time of the execution of this document?

A. Yes.

Q. And this document then was prepared merely as a living record of that happening, is that correct?

A. That's right. (Tr. 7.) * * *

(A memorandum dated May 12, 1970 and addressed to Whom it May Concern, was introduced into evidence as Examiner's Exhibit #2 at the August 23, 1972 hearing). In the memorandum, Mrs. Parot stated among other things that she went to the Tri-State Convalescent Center on the morning of May 12, 1970, to prepare the will of John Ramsey at the request of Thomas St. Clair, Superintendent, Northern Idaho Indian Agency. She further stated that she met Clara Ramsey Scott in John Ramsey's room when she arrived; that Clara introduced Mrs. Parot to her father; that Clara asked her father several questions; and that Mrs. Parot then excused Clara from the room. (Tr. 8.)

On further examination Regina Parot testified as follows:

Q. All right. Now then, will you hand me the paper in your hand?
Now then I want you to tell me what you found when you went into the room of John Ramsey and the . . . it was over at the place near the hospital Mrs Parot, you said that John Ramsey could read and write the day that you were there?

A. Yes.

Q. And did he read the will?

A. He did not read it himself, no.

Q. Who read it?

A. I read him the will.

Q. Now then, you said he could write?

A. To my knowledge, he could write.

Q. And that he could read and write?

A. As far as I know, I didn't test him for whether or not he could write for very long. * * *

Q. And he was paralyzed except for the, some movement, a slight movement of the right arm?

A. That I didn't know.

Q. And he was blind, wasn't he?

A. No, I don't think he was blind.

Q. Did you observe him?

A. Yes I did.

Q. And how much talking did he do?

A. He did enough talking. . .

Q. Now isn't it a fact only answer yes or no?

A. No it is not a fact.

Q. But he could see him?

A. Yes.

Q. He could see the will?

A. He could see. I had the paper in my hand and he did look at it.

Q. And he had a previous, and you drew this from previous wills, didn't you? I mean you got the description?

A. I . . . No, I took the descriptions with me. I make it a point that before I make a will, if I know who the person is . . .

Q. I didn't ask you what you make a point of, I asked you what you did that day.

A. I took the description with me.

Q. And where did you get the description?

A. From my legal records here and the branch of realities.

Q. The will appears to have the descriptions of the same order they are in the will of '65. Can you explain that?

A. Only for the fact that we were trying to keep it as close to the last one as we could . . . (Tr. 10-12.)

* * * * *

Q. All right, he could write couldn't he?

A. As far as I knew he could write.

Q. All right, then why didn't you have him sign the will?

A. We asked him to sign it. I asked him if he wanted to sign it or put his thumbprint and he said his thumbprint would be easier for him. (Tr. 14.)

(NOTE: Decedent executed a previous will dated June 3, 1965 by putting his thumbprint on the document).

The pertinent portions of Clara Ramsey Scott's testimony taken from the transcript of the hearing held on August 23, 1972 are hereinafter set forth:

Q. And isn't it a fact that you asked Mrs. Parot to go over there and draw a will for your father?

A. No. (Tr. 79.) * * *

Q. And weren't you there at the time that she was over . . .

A. No I wasn't.

Q. You weren't over at the convalescent home?

A. I was over there but I was in the car because . . .

Q. Whose car?

A. In my car. I went over in the morning and I was sitting there when I seen Mrs. Parot and then, so I backed off . . .

Q. Just a moment. Just answer my question. Did you know that Mrs. Parot was there to draw a will for your father?

A. No. (Tr. 80.)

Pertinent portions of the testimony of Mildred Rowley, a practical nurse at Tri-State Convalescent Home, taken from the transcript of the hearing held on August 23, 1972 are hereinafter set forth:

Q. Now I don't want you to give a medical opinion and I'll not ask you for them but wasn't Mr. Ramsey a little hard of hearing, just a little?

A. I don't know whether he was hard of hearing or just wouldn't answer. Sometimes we would have to ask him a couple of times, maybe three times before he would answer.

Q. And then would he answer just yes or no or would he go into a long . . .

A. No, no, John would say yes or no.

Q. Just yes or no? That's all he ever answered?

A. I never did have a conversation with Mr. Ramsey. (Tr. 29.) * * *

* * * * *

Q. Now his eyes. Could he see things?

A. I don't think so. Now he may have been able to see shadows when he first went to the nursing home and he would move his head when we would be around but then later on it seemed that he may not have seen anything.

Q. At the time of making this will, did you ever see him read anything?

A. I did not.

Q. Now when the time came for the pressing of his thumbprint, what happened? (Tr. 32.) * * *

A. It has been so long ago but as far as I can remember, John raised his hand a bit, the lady put the pad there and sort of guided his hand to the pad for the ink and then she had the paper here and she guided his hand over to the proper place.

Q. She took hold of his hand and put it in the proper place?

A. Yes, she . . . otherwise his hand would not go to the proper place. (Tr. 33.) * * *

The testimony of Aaron Ramsey is given weight only insofar as he took care of the decedent from 1963 up to the time the decedent was placed in the convalescent home in 1970.

To recapitulate, the testimony of Dr. Bauman was given great weight because he was John Ramsey's physician from 1969 to the date of his death; and was a disinterested party who observed the decedent on numerous occasions. Great weight is also given to the testimony of Benedict Ramsey, decedent's son, because John Ramsey resided with Benedict for a period prior to 1963; because Benedict had many opportunities to observe decedent at home, in the hospital and at the convalescent home; and because his testimony at the hearing was against his own interest.

The testimony of Regina Parot was given weight only insofar as she was the scrivener who drafted the will because of the discrepancies in her testimony and the testimony of Clara Scott.

For example, Regina Parot testified through a memorandum she had prepared on May 12, 1970, admitted into evidence at the hearing of August 23, 1972, that she was requested by Thomas H. St. Clair, Superintendent, North Idaho Indian Agency, to draft a will for John Ramsey, that on the morning of May 12, 1970, when she entered John Ramsey's room, Clara Scott was there; that Clara

introduced Mrs. Parot to John Ramsey, after which Clara left the room.

Clara Ramsey testified repeatedly that she was not at the hospital; that she was not present in the room when Mrs. Parot arrived on May 12, 1970, to draft John Ramsey's will, nor did she know that John Ramsey was having a will drafted. She further testified that she, Clara, was sitting outside the hospital on May 12, 1970, and when she saw Mrs. Parot arrive she backed off.

Regina Parot testified that she had never seen John Ramsey before May 12, 1970. She further testified that John Ramsey could read, write and speak the English language. Yet upon further questioning she testified that John Ramsey neither read nor wrote in her presence. Although John Ramsey was paralyzed, she testified that she did not know that he was paralyzed.

To further confuse the testimony of Mrs. Parot, Mildred Rowley, a practical nurse who had taken care of and witnessed the will of John Ramsey on May 12, 1970, testified that John Ramsey on May 12, 1970, could not see and could answer only yes or no to questions relating to his needs. Mildred Rowley further testified that she never conversed with John Ramsey, nor did she ever see him read or write.

After full and careful consideration of the record including the transcript of the hearing held on August 23, 1972, we find that the testator did not have sufficient mind and memory to understand the transaction in which he was engaged on May 12, 1970, to comprehend generally the nature and extent of the property which constituted his estate and of which he was contemplating disposition, and to recollect the objects of his bounty.

We further find that sufficiently clear, cogent and convincing proof exists to overturn the May 12, 1970 will and that it should be disapproved.

NOW, THEREFORE, by virtue of authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is hereby Ordered:

1. That the part of the Administrative Law Judge's order approving the testator's Last Will and Testament dated May 12, 1970, IS REVERSED and the will declared INVALID.
2. That the matter herein is REMANDED to the Administrative Law Judge for the purpose, after the

parties in interest have been duly notified, of determining the validity of the decedent's Last Will and Testament executed June 3, 1965 and entering an order accordingly. This decision is final for the Department.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge